

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, California 95814



October 5, 1998

TO: ALL RESIDENTIAL CARE FACILITY FOR THE CHRONICALLY ILL LICENSEES
ALL RESIDENTIAL CARE FACILITY FOR THE CHRONICALLY ILL EMPLOYEES
ALL RESIDENTIAL CARE FACILITY FOR THE CHRONICALLY ILL APPLICANTS

FROM: MARTHA LOPEZ, Deputy Director
Community Care Licensing Division
California Department of Social Services

SUBJECT: IMPORTANT LAW CHANGES FOR BACKGROUND CHECKS

This letter provides important information about two law changes which take effect on October 17, 1998 (1. **Senate Bill 933**, Chapter 311, Statutes of 1998; and, 2. **Senate Bill 2194**, Chapter 831, Statutes of 1998.). These new laws make many changes in the background check process for all residential care licensees, facility employees, applicants for a license, and the facility's non-client adult residents.

In summary, the highlights of the new law changes are as follows:

Effective immediately

- Fingerprints are required for any staff person – employee or volunteer (supervised or not) - with any client contact;
- Fingerprints must be submitted to the California Department of Justice (DOJ) before any contact with clients or presence in the facility;
- Licensees are subject to a \$100.00 Civil Penalty per violation for failure to submit fingerprints within the required timeframe;
- A request for transfer of a clearance between two facilities must now be made in writing;

Effective January 1, 1999

- A Federal Bureau of Investigation (FBI) Check will become mandatory for all new background checks submitted after January 1, 1999; and,

- The new Livescan electronic fingerprint process will become the approved fingerprinting process utilized by both the California Department of Social Services (Department) and DOJ.

Effective upon statewide operation of Livescan

- Individuals will be required to obtain a clearance or exemption prior to their presence in a facility or any contact with clients.

I. CURRENT BACKGROUND CHECK PROCESS

Criminal Background Check Process: State law requires the Department to perform a criminal background check on anyone who provides care in a licensed community care facility. This requires sending a set of fingerprint images to the California Department of Justice (DOJ). The background check is for California criminal convictions and arrests.

FBI Background Check Process: Currently, an FBI background check is only performed for persons who have resided in California for less than two (2) years. The FBI background check is for federal convictions and criminal convictions from other states. This information may not show up on a California DOJ criminal history check. The FBI check is also processed by DOJ.

II. NEW CHANGES IN STATE LAW

Safety Concerns: Recent concerns about the safety of clients in out-of-home care led the Legislature to strengthen the background check process. To enhance the safety of individuals in licensed care, the Legislature passed Senate Bill (SB) 933, which was signed into law by the Governor on August 18, 1998.

Summary Impact of New Law: This new law requires all new applicants for licensure, any new staff persons (both compensated employees and non-compensated volunteers) in licensed facilities who have client contact, and any individuals who reside in a licensed facility that are not clients, to undergo a mandatory FBI fingerprint check in addition to the DOJ fingerprint check. This requirement starts January 1, 1999 for all new background checks. These new legal requirements are not retroactive for individuals already cleared under current background check procedures.

These new laws have several other important new criminal background check provisions that go into effect at different times. The new provisions expand the number of individuals required to obtain a criminal background check, increase penalties for non-compliance, and also address the impact of the new electronic “fingerprinting” system known as ***Livescan***. These changes are described in the next section.

III. PROVISIONS OF NEW LAW THAT AFFECT YOU

Dates To Be Aware Of. Different provisions of SB 933 go into effect on **October 17, 1998** and **January 1, 1999**. Please note the following changes and the date when the change becomes mandatory.

October 17, 1998:

A. FINGERPRINTS MUST BE SUBMITTED BEFORE CLIENT CONTACT

Old Law: required fingerprinting of persons who had “frequent and routine” client contact and who are not supervised to be fingerprinted. Fingerprints also had to be submitted to DOJ not later than twenty days from the date they were employed.

New Law: any staff person, volunteer or employee, must be fingerprinted whose job may require client contact. Individuals who must now be fingerprinted include janitors, cooks, groundskeepers, administrative staff and other employees whose *duties may result in client contact while they perform their job*. Unless an individual exception is specifically granted in writing by your local licensing office, all individuals with client contact must have their fingerprints submitted *before* employment, residence or initial presence in the facility. Adult, non-relative volunteers must also be background check cleared.

Exceptions: There are only a few exceptions to the background check requirements. Exceptions will only be considered if a licensee provides convincing evidence that a staff person or a non-client resident has no opportunity for client contact in the course of their job duties. Individuals who are not required to be fingerprinted under these new provisions include:

- 1) **Supervised Non-Facility Personnel:** This includes repairpersons whose work is directly supervised by a *present* facility employee. For example, this may be a plumber, electrician, telephone company employee, contracted groundskeeper or utility meter reader employee.
- 2) **Recreational Leaders and Assistants:** This includes individuals such as piano players, dance or physical education instructors, or arts and crafts facilitators, etc., when these individuals are supervised by a *present* facility employee. Further, these individuals are not considered in the staff-to-client ratio requirements specified in regulations.
- 3) **Certified Nursing Assistants and Home Health Aides:** Senate Bill 2194 (Chapter 831, Statutes of 1998) allows both Certified Nursing Assistants (CNAs) and Home Health Aides (HHAs), with a current fingerprint background check and certification issued by the Department of Health Services on or after July 1, 1998, to enter a community care facility without being fingerprinted a second time. A CNA or a HHA who provides client assistance must provide a copy of his or her current certification. This certification card (a sample is attached) indicates if a background check has been completed. Only CNAs or HHAs certified subsequent to July 1, 1998 have been fingerprint checked. The facility must

maintain a copy of the certification card on file as long as care is being provided by the CNA or the HHA.

- 4) **Placement Agency**: Staff provided by a placement agency, such as a regional center, are not subject to these fingerprint requirements. This would include social workers, counselors, physical therapists, physicians, psychologists or psychiatrists.
- 5) **Visiting Relatives/Friends of Person in Care**: Relatives and friends of persons in care are exempt if they are visiting only and not providing paid services.
- 6) **Volunteers**: A volunteer shall be exempt if they are a relative, significant other or close friend of a client receiving care in the facility and the volunteer is not used to replace or supplement staff in the direct care and supervision of a client.

B. \$100 CIVIL PENALTY FOR NON-COMPLIANCE

A licensee is subject to an immediate \$100 civil penalty for each violation if they have not submitted the fingerprint card of a new employee, or a new non-client facility resident, before the individual is employed or has any client contact.

C. TRANSFER OF CLEARANCE REQUEST MUST BE MADE IN WRITING

Any request to transfer an individual's criminal record clearance between licensed care facilities must be submitted in writing to the appropriate licensing district office. The person's identity must be confirmed and verified and a copy of the person's driver's license or California issued identification card provided with the request. Also, the facility must submit the transfer request *before* the individual has client contact or the facility will be subject to the \$100 civil penalty.

January 1, 1999:

A. MANDATORY FBI CHECKS

Beginning on January 1, 1999, an FBI background check will be required for all new licensee applicants, facility employees, and non-client adult facility residents. This is *not* a retroactive requirement. The FBI check, which is also processed through DOJ, is required for anyone who must have a criminal background check. Applications for licensure and approval to work will not be delayed pending the FBI clearance, however.

IV. LIVESCAN

A. WHAT IS LIVESCAN?

Livescan is an electronic fingerprint imaging process that eliminates the need to “ink-roll” an individual’s fingerprints to conduct a criminal background check. This electronic fingerprinting process, known as “fingerimaging,” allows fingerprint images and personal information to be transmitted quickly and accurately to DOJ. Livescan allows for much faster background checks, with fingerprint checks completed in three business days.

B. BACKGROUND CHECKS WILL BE INITIATED THROUGH LIVESCAN

When the DOJ Livescan fingerimaging system becomes “operational” statewide, all applicants will be required to obtain a criminal background clearance or exemption before having any client contact. Upon request, the applicant will provide proof of submission of fingerprints either by 1) showing their copy of the Livescan receipt, or 2) by showing a copy of their submitted fingerprint card. We expect Livescan to be available in most geographic locations in the state by the early part of 1999. The Department will provide a 30-day advance notice before this provision of the law is implemented. We anticipate that it may require 12-18 months before Livescan is fully operational, statewide, based on the definition of the new law.

C. LIVESCAN SITES WILL BE LOCATED STATEWIDE

We encourage you to take full advantage of Livescan. Livescan stations will be located in Community Care Licensing District Offices and law enforcement offices throughout the state. There will be a Livescan processing fee that will be equivalent to existing fees for ink rolling fingerprints.

See attached Livescan information sheet for further details.

V. COSTS FOR BACKGROUND CHECK PROCESSING

A. DOJ FINGERPRINT CHECK

The cost of the DOJ fingerprint check is \$42.00.

B. FBI CHECK

The cost of the FBI check is **\$24.00**. As is currently the case, this is in addition to the DOJ fingerprint check and application fees.

C. LIVESCAN

The current vendor fee for Livescan processing in licensing district offices will be **\$14.00** in addition to both the FBI and the regular DOJ background check processing fees. However, for Livescan, the DOJ **\$10.00** expedite fee has been eliminated.

Typical costs for background checks will be as follows:

1)	DOJ Fingerprint Check:	\$42.00
2)	FBI Fingerprint Check:	\$24.00
3)	CCL Livescan Vendor Fee	<u>\$14.00</u>
	TOTAL	\$80.00

The Livescan processing fee in other local agencies is determined by that agency and the costs will vary.

VI. FOR MORE INFORMATION

Thank you for your cooperation in implementing these new state laws that directly affect you and your facility operations and we appreciate your assistance.

If you have any additional questions, please contact your licensing program analyst at your local district office.

If you use the internet, you can check for up-to-date licensing information on the Department's internet web address at www.dss.cahwnet.gov. Complete copies of SB 933 and SB 2194 are available at the internet address of the California State Senate, at www.sen.ca.gov.

cc: All County Welfare Departments